

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SHAWN MURPHY,

Petitioner(s),

vs.

MICHAEL SHEETS, WARDEN,

Respondent(s).

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Case Number: 1:08cv628

Chief Judge Susan J. Dlott

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Timothy S. Black filed on May 13, 2009 (Doc. 14), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired June 1, 2009, hereby ADOPTS said Report and Recommendation.

Accordingly, respondent's motion to dismiss (Doc. 6) is **GRANTED** and the petition is **DISMISSED** with prejudice on the ground that it is barred from review under the one-year statute of limitations set forth in 28 U.S.C. § 2244(d).

Petitioner's motion for summary judgment (Doc. 11) is **DENIED**.

A certificate of appealability will not issue with respect to the petition, which this Court has concluded is barred by the statute of limitations, because under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" would not find it debatable whether the Court is correct in its procedural ruling.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order adopting this Report and Recommendation will not be taken in "good faith" and, therefore,

DENIES petitioner leave to proceed on appeal *in forma pauperis* upon showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 942, 952 (6th Cir. 1997).

IT IS SO ORDERED.

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s/Susan J. Dlott

Chief Judge Susan J. Dlott
United States District Court